IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05.11.2007

CORAM

THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR. JUSTICE N.PAUL VASANTHAKUMAR

W.A. NO. 1114 OF 2007
AND
M.P. NO. 2 OF 2007

1. The Secretary to Government
   of Tamil Nadu
   Home (Transport-II) Department
   Fort St. George, Chennai - 600 009.

2. The Transport Commissioner
   Chepauk, Chennai - 5. .. Appellants

- Vs -

N.Shanmugasundaram .. Respondent

Writ Appeal filed against the order dated 19.01.2007 passed by the learned single Judge in W.P. No. 656 of 2007 under Article 226 of the Constitution of India pleased to issue writ of certiorari to call for the records of the charge memo issued by the 2nd respondent dated 26.7.2006 in memo R.No.39614/V3/06 and quash the same.

For Appellants : Mr. D.Srinivasan, AGP

For Respondents: Mr. R.Thiagarajan, SC, for Mr. G.Ganesh

JUDGMENT

S.J.MUKHOPADHAYA, J.

The appellants have challenged the order passed by learned single Judge dated 19th Jan., 2007, in W.P. No.656/07. By the said order, learned single Judge set aside the order of suspension on the ground that the said order was passed mechanically without application of mind.

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2. The only question required to be determined in this case is whether there was any occasion for learned single Judge to interfere with the order of suspension.

3. The brief facts of the case is that the 1st respondent/writ petitioner was proceeded departmentally vide charge memo R. No.39614/VC3/06 dated 26th July, 2006, issued by the Transport Commissioner, Chennai. Three charges were levelled against him, including registration of vehicles based on false documents. It was alleged that he failed to detect the improper registration and there was failure to report such illegality to the higher authorities. Further allegation was made that the officer failed to monitor the registration of six foreign cars and all those six foreign cars were Government property and earlier stolen. Subsequent to the charge memo, he was suspended vide G.O. 2 (D) No.763 dated 18th Dec., 2006, issued from Home (Transport-II) Department. The order of suspension was issued by the order of the Governor.

4. In the opening sentence of the order of suspension as it was mentioned that a departmental proceeding was contemplated, learned single Judge held that there was no application of mind as proceeding had already been initiated vide charge memo dated 26th July, 2006, and, thereby, set aside the order of suspension.

5. Learned counsel for the appellant-State submitted that the reference of charge memo had already been given in the order of suspension and it was casually mentioned that it was contemplated as enquiry officer was to be appointed. In any case, mere using of a wrong wording in the order will not render the order of suspension invalid.

On the other hand, according to the counsel for the respondent, instead of proceeding in the departmental proceeding, the State authorities suspended him without application of mind, as reflected in the order of suspension.

6. For proper appreciation of the case, it is desirable to extract the relevant portion of the order of suspension, which reads as follows :-

HOME (TRANSPORT-II) DEPARTMENT

G.O. 2(D) No.763 Dated: 18/12/2006

1. Transport Commissioner's charge memo R.No.39614/V3/2006, dated 26/7/2006

2. Transport Commissioner's Letter R. No.39614/V3/2006 dated 7/11/2006

ORDER

WHEREAS, charges against Thiru. N.Shanmugasundaram, Regional Transport Officer, Chennai (North) is contemplated in the reference

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first read above.

AND WHEREAS in the circumstances of the case, it is necessary in the Public Interest to place the said Thiru. N.Shanmugasundaram under suspension from service and the reasons for such suspension cannot be furnished in the larger public interest.

Now therefore, under sub-rule (e) of Rule 17 of Tamil Nadu Civil Services (Discipline & Appeal) Rules, the said Thiru. N.Shanmugasundaram is with immediate effect-from the date of his relief from duty, placed under suspension from service, until further orders.

2. During the period of suspension the said Thiru.N.Shanmugasundaram will be paid subsistence allowance and dearness allowance as admissible under Fundamental Rule 53(1).

3. The Head Quarters of the said Thiru. N.Shanmugasundaram durint the period of suspension shall be Chennai. The said Thiru. N.Shanmugasundaram shall not leave the Headquarters without obtaining prior permission of the authority concerned.

(BY ORDER OF THE GOVERNOR)
S.MALATHI
SECRETARY TO GOVERNMENT

From the aforesaid order, it will be evident that the authority has noticed that charge memo R. No.39614/VC3/06 dated 26th July, 2006, had already been issued against the delinquent employee. In public interest, as it was felt that the officer should be placed under suspension from service, the order was issued under sub-rule (e) to Rule 17 of the Tamil Nadu Civil Service (Discipline & Appeal) Rules, which empowers the competent authority to suspend in contemplation of a departmental proceeding or during the pendency of a departmental enquiry, as quoted hereunder :-

"(e) (1) A member of a service may be placed under suspension from service, where

(i) an enquiry into grave charges against him is contemplated, or is pending; or

(ii) a complaint against him or any criminal offence is under investigation or trial and if such suspension is necessary in the public interest."

Such power having been vested with the competent authority and by the order of the Governor, the power under sub-rule (e) of Rule 17 of the Tamil Nadu Civil Service (Discipline & Appeal) Rules having been exercised, it cannot be held to be illegal.

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7. Another fact has come to our notice. From the writ petition it will be evident that the respondent/petitioner had not challenged the order of suspension. He challenged the charge memo R. No.39614/VC3/06 dated 26th July, 2006, by which departmental proceeding was initiated. It appears that at the time of hearing, on behalf of the respondent/petitioner, the challenge to the charge memo dated 26th July, 2006, was not pressed and argument was advanced with regard to legality and propriety of an order of suspension, which was not under challenge. In such a case, it was not open to learned single Judge to give a declaration or finding with regard to an order of suspension, which was not the issue involved in the writ petition.

8. In view of the finding above, the order passed by learned single Judge cannot be upheld and, accordingly, we set aside the order dated 19th Jan., 2007, passed in W.P. No.656/07 and dismiss the writ petition. The writ appeal is allowed. Consequently, connected miscellaneous petition is closed. But, there shall be no order as to costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

GLN

To

1. The Secretary to Government
   of Tamil Nadu
   Home (Transport-II) Department
   Fort St. George
   Chennai - 600 009.

2. The Transport Commissioner
   Chepauk, Chennai - 5.

1 cc to mr.S. Ganesh, Sr. 66181

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